

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 30, 2007 has been entered. Claims 21-31 and new claims 32-37 are pending and under examination.

Double Patenting

2. Claims 32-37 are objected to under 37 CFR 1.75 as being a substantial duplicate of claims 22, 23, 25, 27, 30, 32 and 33, respectively. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claims Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 21, 24, 26, 29 and 31 are rejected under 35 U.S.C. 102(b) as anticipated by Cuisinier *et al.* (*Vaccine*, 1997, 15(10):1085-1094, "Cuisinier"). The instantly claimed invention has priority to its parent application, 09/232,278, filed January 15, 1999.

Cuisinier discloses DNA vaccination using expression vectors carrying FIV structural genes that are studied for their ability to induce an immune response against FIV. Cuisinier vaccinated cats intramuscularly with naked DNA coding for FIV structural proteins envelope, gp120, and nucleocapsid (gag), p10 (page 1086, first column, first full paragraph). The construction of the plasmids pCMV-10 and pCMV-120 is described on page 1086, columns 1 and 2, bridging paragraph. Expression of envelope and nucleocapsid proteins was observed *in vivo* after transfection with the pCMV plasmid constructs directly under the control of the CMV promoter (page 1087, second column, "RESULTS" section). As for immune responses to the pCMV plasmid constructs, the pCMV-120 construct induced a humoral immune response, while the pCMV-p10 construct, interestingly, induced no humoral immune response (see Table 1, page 1090, and page 1091, column 2, first full paragraph). In view of Cuisinier's teachings, the subject matter of claims 21 and 24 is anticipated.

Applicant argues that the instant application has priority to January 15, 1999. However, this cannot be determined without English translations of the priority documents PCT/FR97/01315 and French application 96/09337. Applicant indicates that the verified English translations of the priority documents will be provided under separate cover.

The Office has considered Applicant's remarks. As of the date of this Office action, these documents have not been received in the Office. Therefore, the rejection is maintained pending the receipt and consideration of the English translations of the priority documents.

Conclusion

4. Claims 22, 23, 25, 27, 28 and 30 are objected to for depending from rejected claims, but are otherwise allowable.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stacy B. Chen whose telephone number is 571-272-0896. The examiner can normally be reached on M-F (7:00-4:30), alternate Fridays off,. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell can be reached on 571-272-0974. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

/Stacy B. Chen/ 4-15-2008
Primary Examiner, Art Unit 1648